

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA

vs.

DION L. BARNARD

Defendant

:  
:  
:  
:  
:  
:

CR CASE NO. 06-73

MOTION TO DISMISS INDICTMENT

And now, comes the Defendant, Dion L. Barnard, by and through his attorney,  
Joseph A. Ratasiewicz, Esquire, and files the within Motion and avers as follows:

1. Defendant was indicted on June 7, 2006 and charged with violating Title 21, United States Code §841.
2. On May 12, 2008, jury selection was commenced resulting in twelve (12) jurors and two (2) alternates to hear the case.
3. Thereafter, trial commenced on the afternoon of May 12, 2008.
4. On May 13, 2008, during the government's case, direct examination was being conducted of witness U.S. Marshall Robert Henderson.
5. During said examination, Assistant U.S. Attorney, Lesley Wolf, inquired of witness Henderson concerning fingerprint acquisition of Defendant Barnard.
6. Upon questioning witness Henderson, inquiry was made into the source of the acquisition of matching the fingerprints to Defendant Barnard.
7. Said inquiry resulted in the following exchange:

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DISTRICT OF DELAWARE

Henderson Direct

- Q. "Does this particular record list an FBI number associated with Dion Barnard?
- A. Yes. It does.
- Q. Could you please tell the jury what the number is?
- A. It's 849624WA5.
- Q. Was that number manually entered, inputted, at the time he was processed?
- A. No.
- Q. How does that number get into the record?
- A. Once we take his fingerprints it gets submitted to AIFIS, and usually within 5 to 10 minutes we get a response saying that person that was fingerprinted is whoever it is in the database. In this case he was fingerprinted and it came back to Dion Barnard with that FBI number.
- Q. If the Defendant had given you a different name, and the prints matched somebody else that you had in the system, would you have received notification of that?
- A. Yeah. It would have still come back to Dion Barnard, though, if he had been previously arrested. So it didn't matter what name he told me.
- Q. So just to be clear—did that happen here?
- A. No. When he was processed, he gave the correct information. And when it came back from AIFIS, it matched.
- Q. So it matched the person in the AIFIS system known as Dion Barnard?
- A. Right.
- Q. That person had the FBI number 849623WA5?
- A. Yes."

8. At the conclusion of the above, objection was made by the defense which ultimately resulted in the defense being required to move for a mistrial.

9. After the lunch break, the parties returned, at which time the Court entertained further discussions on the defense's motion for a mistrial which resulted in the Court granting said mistrial.

10. Defendant Barnard hereby avers that the Government's conduct during questioning of witness Henderson rose to the level of prosecutorial misconduct as said questioning was intended to "goad" the defense into moving for a mistrial.

11. Based upon the Government's misconduct in provoking a mistrial, a retrial of Defendant must be barred under the "double jeopardy" grounds of the U.S. Constitution..

**WHEREFORE**, Defendant prays this Honorable Court dismiss the indictment against him based upon the Double Jeopardy clause of the U.S. Constitution.

Respectfully submitted:  
**FRONT STREET LAWYERS, P.C.**

BY: \_\_\_\_\_

  
**JOSEPH A. RATASIEWICZ, ESQUIRE**  
**Attorney for Defendant**

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
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UNITED STATES OF AMERICA	:	
	:	CR CASE NO. 06-73
vs.	:	
	:	
DION L. BARNARD	:	
Defendant	:	

**ORDER**

AND NOW, this            day of            , 2008, upon  
consideration of the within Motion to Dismiss Indictment and after hearing thereon, it is  
hereby **ORDERED** and **DECREED** that all relief therein sought is granted and the  
indictment against Defendant Barnard is **DISMISSED** with prejudice.

**BY THE COURT:**

\_\_\_\_\_  
J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CR CASE NO. 06-73  
:   
vs. :   
:   
DION L. BARNARD :

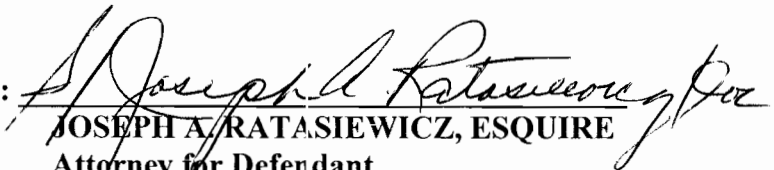
**CERTIFICATION OF SERVICE**

I, **JOSEPH A. RATASIEWICZ, ESQUIRE**, attorney for Defendant, certify that a copy of Defendant's Motion to Dismiss Indictment was served on the following individuals via First Class U.S. Mail Postage Prepaid on June 9, 2008; and via hand delivery on June 9, 2008.

*Lesley Wolf, Esquire  
U.S. Department of Justice  
U.S. Attorney's Office, District of Delaware  
The Nemours Bldg.  
1007 North Market Street, Suite 700  
P.O. Box 2046  
Wilmington, Delaware 19899-2046*

*Honorable Gregory M. Sleet  
U.S. District Court for State of Delaware  
844 King Street, Room 3124  
Wilmington, Delaware 19801*

Respectfully submitted:  
**FRONT STREET LAWYERS, P.C.**

BY:   
**JOSEPH A. RATASIEWICZ, ESQUIRE**  
Attorney for Defendant